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Policy issues

Implementation of decisions adopted by the governing body at previous sessions

Process for the midterm review of the fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme IV), and developments in the implementation of Governing Council decision 27/9 on advancing justice, governance and law for environmental sustainability

Report of the Executive Director

Summary

The present report provides information on a process for a system-wide in-depth midterm review of the fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme IV) to be carried out pursuant to United Nations Environment Programme (UNEP) Governing Council decision 25/11 (I) of 20 February 2009, which will include, inter alia, a report on the implementation of Governing Council decision 27/9 on advancing justice, governance and law for environmental sustainability.

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I. Background

1. Since the establishment of the United Nations Environment Programme (UNEP), environmental law has been one of its key areas of work. From 1982 to date, UNEP environmental law activities have been organized and coordinated through a series of 10-year programmes, adopted by the Governing Council of UNEP, for the development and periodic review of environmental law, widely known as the Montevideo Programme for the Development and Periodic Review of Environmental Law.[1]

2. The Montevideo Programme has been instrumental in steering the efforts of the international community to develop environmental law which transforms science-based policies into action-oriented rules and standards of conduct. A number of multilateral environmental agreements were conceived under the Montevideo Programme and negotiated under the auspices of UNEP. The mandate of UNEP in this area has been recognized in Agenda 21, the Programme for the Further Implementation of Agenda 21, the Nairobi Declaration on the Role and Mandate of the United Nations Environment Programme and the Malmö Ministerial Declaration, among others.

3. The fourth Programme – Montevideo Programme IV – was adopted by the Governing Council of UNEP in its decision 25/11 (I) of 20 February 2009 as a broad strategy for the international law community and UNEP in formulating activities in the field of environmental law for the decade beginning in 2010. Montevideo Programme IV covers 27 programme areas, each of which consists of an objective, a strategy and a set of actions. The programme areas are clustered into four parts, namely effectiveness of environmental law; conservation, management and sustainable use of natural resources; challenges for environmental law; and relationships with other fields. All the programme areas of Montevideo Programme IV are listed in the annex to the present report.

4. The programme areas, together with their respective objectives, strategies and actions, are a non-exhaustive list of elements for the Programme. UNEP, in accordance with its catalytic role, takes action in these areas in coordination with States, conferences of the parties to and secretariats of multilateral environmental agreements, other international organizations, non-State actors, experts and relevant stakeholders. For UNEP, the implementation of these activities is consistent with the UNEP biennial programmes of work.

5. The Montevideo Programme, as a broad, action-oriented strategy and agenda for the world in the field of environmental law, has become synonymous with the evolution of environmental law, from a field that was primarily concerned with legal responses to constantly improving knowledge and science about the natural environment to a field that has become more robust, more comprehensive and one that is more far-reaching in catalysing actions to promote changes in laws and institutions to enable countries to meet the environmental challenges they face. The Montevideo Programme has ensured that, in 2014, environmental law is an integral part of the rule of law across the world, both at the national and international levels, governing norms and setting standards relevant to various aspects of the interface between human society and the environment.

6. The Montevideo Programme has also been a powerful driver for exemplifying increasing linkages[2] between environmental law and other areas, most notably the three pillars of the United Nations, namely peace and security, human rights and development. It has assisted the international community to highlight areas of concern, gaps and challenges, and has provided a comprehensive framework for the progressive development of legal principles and obligations in the field of the environment.

[1] The first programme (Montevideo Programme I) and the programme for the 1990s (Montevideo Programme II), adopted by the Governing Council at its tenth session, in 1982, and its seventeenth session, in 1993, respectively, were instrumental in providing UNEP with strategic guidance in this field. Since 2001, the third programme (Montevideo Programme III) has provided UNEP with strategic guidance for the progressive development of environmental law and support for the implementation of environmental law in member States. The report on the review of the third Programme for the Development and Periodic Review of Environmental Law is set out in document UNEP/GC.25/INF.15/Add.1.

[2] See on these linkages also: Edith Brown Weiss, *Japanese Yearbook of International Law*, Vol. 54 (2011), pp. 1–27.

II. Process for a system-wide in-depth midterm review of Montevideo Programme IV

7. The UNEP Governing Council, in paragraph 4 of decision 25/11 (I) of 20 February 2009, requested the Executive Director to undertake a midterm review of the implementation and effectiveness of Montevideo Programme IV no later than at the twenty eighth session of the Governing Council in 2015 and to report at the thirtieth session in 2019 on the impact of the Programme.

8. Since Montevideo Programme IV is a broad strategy for the international law community and UNEP in formulating the activities in the field of environmental law for the decade 2010–2019, and also because the Executive Director is requested to implement the Programme in close collaboration with States, conferences of the parties to and secretariats of multilateral environmental agreements, other international organizations, non-State stakeholders and individuals, the midterm review of the implementation of the Programme and its effectiveness will be carried out in close collaboration with all those concerned.

9. The UNEP secretariat will therefore undertake an open and all-inclusive process for the midterm review of Montevideo Programme IV. In this process, Governments, United Nations bodies, funds, programmes and specialized agencies, other relevant intergovernmental bodies and organizations, secretariats of the relevant multilateral environmental agreements, expert institutions, academia and other relevant institutions and organizations will be invited to submit to the UNEP secretariat, by 30 November 2014, information relevant to the implementation of the Programme, including their relevant experiences, progress or challenges in one or more of the specific programme areas of Montevideo Programme IV, and views concerning important and emerging issues in the field of environmental law. The UNEP secretariat will make such submissions available on the UNEP website as it receives them.

10. During the same period, as appropriate, the UNEP secretariat will consult with Governments and all relevant organizations and entities referred to above and, where necessary, eminent individual experts on environmental law or related areas. Such consultation might take the form of meetings of experts, seminars or workshops focusing on the specific programme areas of or issues addressed by Montevideo Programme IV. The outcomes of the relevant meetings, seminars and workshops will be published on the UNEP website as soon as they become available in written form.

11. The UNEP secretariat will subsequently compile the information received from the above processes and prepare an analytical report on the implementation of Montevideo Programme IV by 28 February 2015, and distribute it to all Governments and relevant organizations and entities, and also make it available to the public.

12. In order to facilitate consideration of the above-mentioned report and evaluation of the effectiveness of the Programme, the UNEP secretariat intends to convene an open-ended meeting of senior government officials experts in environmental law (i.e., a meeting similar to the one at which Montevideo Programme IV was negotiated and prepared) by 30 June 2015, subject to the availability of resources. This meeting could recommend a way forward for the further implementation of Montevideo Programme IV up to 2019, including priority areas in the field of environmental law which might be critical to supporting the efforts of the international community to implement the obligations and commitments under the existing internationally agreed environmental objectives and goals, and to identify emerging environmental issues of global significance that would require legal or institutional response. The meeting could set the stage for the further process designed to provide perspectives beyond the year 2020 in the field of environmental law after the conclusion of Montevideo Programme IV, which might require its own process at a later date. The meeting could also recommend practical means to measure the impact of the Programme.

13. The above process for the midterm review of Montevideo Programme IV will highlight, among other things, the coherence of policies and actions across the bodies, funds, programmes and specialized agencies of the United Nations system in the field of environment law, and is expected to provide a useful platform for sharing relevant experiences and for eventually facilitating a coordinated approach and collaboration among the relevant bodies and organizations to address the relevant issues of common interest in the field of environmental law. Recommendations and other outcomes from this process, in particular the outcomes of the above-mentioned open-ended meeting of senior government officials expert in environmental law, may therefore be shared widely within the United Nations system, including through the submission of relevant recommendations from the United Nations Environment Assembly of UNEP, or the Executive Director on its behalf as authorized by it, to the General Assembly and the Economic and Social Council during consideration of the nexus between

the rule of law, sustainable development and environmental sustainability and relevant coordination and collaboration within the United Nations system.

14. During the process of the midterm review of Montevideo Programme IV, particular attention will be paid to the following points:

(a) Linkages between the three pillars of the United Nations – peace and security, human rights and development – and the relevant programme areas of Montevideo Programme IV, including in the context of strengthening the rule of law and the nexus between human rights and the environment as demonstrated in the ongoing activities of UNEP, in order to collaborate with the relevant bodies of the United Nations system in those areas;

(b) Principles of environmental law developed by the international community and widely applied in policies and legal instruments at the national and international levels, including multilateral environmental agreements. In this context, the examination of the application of existing principles, including those contained in the 1972 Stockholm Declaration on the Human Environment and the 1992 Rio Declaration on Environment and Development, as well as emerging principles, for instance the principle of non-regression,[3] may be pursued;

(c) Progressive development of international environmental law since the adoption of Montevideo Programme IV, including new multilateral treaties under preparation or those concluded (for example, the Minamata Convention on Mercury, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity, and the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety to the Convention on Biological Diversity), further development within the existing regimes of certain multilateral treaties (such as amendments and decisions of the respective parties regarding the operation of those treaties), and development of international non-legally binding instruments or international institutional arrangements in the field of the environment;

(d) The need for and feasibility of developing international environmental law in the light of emerging issues of international concern and in connection with the programme areas of Montevideo Programme IV;

(e) Implementation of the existing internationally agreed environmental goals and objectives contained in the outcomes of relevant United Nations summits and conferences and relevant international legal instruments;

(f) Means to promote compliance with and enforcement of environmental law, including through institutional capacity-building, strengthening of national legislation, networking of institutions and enhancing partnerships;

(g) Environmental rule of law: implementation of Governing Council decision 27/9 on advancing justice, governance and law for environmental sustainability.

15. It is hoped that the above midterm review process will not only generate information regarding the status of the progress made or challenges in the implementation of Montevideo Programme IV, but also serve as an international platform for all those active in the field of environmental law and the international law community as a whole to enhance global partnership in the field of environmental law with a view to contributing to strengthening the institutional architecture for achieving sustainability of the global environment.

[3] Given the power of parliaments as legislators and the implied notion that legal norms can generally be modified or revoked at any later time, this raises the question of how the existence of irreversible norms can be justified. Proponents argue that the purpose of environmental law implies the prohibition of regressive measures. They point to the fact that environmental law, as demonstrated by key principles such as prevention, public participation, intergenerational equity and precaution, is not only intended to regulate, but also to constantly improve the environment (see Michel Prieur, "De L'urgente Nécessité De Reconnaître Le Principe De 'Non Régression' En Droit De L'Environnement", *IUCN Academy of Environmental Law e-Journal*, Issue 2011 (1)). The principle of non-regression is already reflected to some extent in environmental law, as in the case of norms in multilateral environmental agreements which prohibit its parties to enter into other agreements with lower levels of protection (for example, see article 11 (1) of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal) and in the case of constitutional rules such as the commitment in the Constitution of Bhutan to maintain a minimum of 60 per cent of Bhutan's total land under forest cover for all time (see article 5 (3) of the Constitution of Bhutan).

Annex

Programme areas of the fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme IV)

I. Effectiveness of environmental law
   - A. Implementation, compliance and enforcement
   - B. Capacity-building
   - C. Prevention, mitigation and compensation of environmental damage
   - D. Avoidance and settlement of international disputes relating to the environment
   - E. Strengthening and development of international environmental law
   - F. Harmonization, coordination and synergies
   - G. Public participation and access to information
   - H. Information technology
   - I. Other means to increase the effectiveness of environmental law
   - J. Governance

II. Conservation, management and sustainable use of natural resources
   - A. Fresh, coastal and marine water and ecosystems
   - B. Aquatic living resources, including marine living resources
   - C. Soils
   - D. Forests
   - E. Biological diversity
   - F. Sustainable production and consumption patterns

III. Challenges for environmental law
   - A. Climate change
   - B. Poverty
   - C. Access to drinking water and sanitation
   - D. Ecosystem conservation and protection
   - E. Environmental emergencies and natural disasters
   - F. Pollution prevention and control
   - G. New technologies

IV. Relationships with other fields
   - A. Human rights and the environment
   - B. Trade and the environment
   - C. Environment and security
   - D. Environment and military activities